

Adopted	Rejected
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## COMMITTEE REPORT

YES:	7
NO:	4

### MR. SPEAKER:

*Your Committee on Public Policy, to which was referred Senate Bill 335, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 immigration and to make an appropriation.
- 4 Page 1, line 10, delete "under" and insert "**in**".
- 5 Page 1, line 12, delete "of" and insert "**concerning**".
- 6 Page 2, line 22, delete "shall" and insert "**may**".
- 7 Page 2, line 27, delete "The" and insert "**If the superintendent**
- 8 **negotiates the terms of a memorandum of understanding under**
- 9 **subsection (b), the**".
- 10 Page 2, line 32, delete "The" and insert "**If the superintendent**
- 11 **negotiates the terms of a memorandum of understanding under**
- 12 **subsection (b), the**".
- 13 Page 2, line 32, delete "shall" and insert "**may**".
- 14 Page 2, line 35, delete "The" and insert "**If the superintendent**

1 negotiates the terms of a memorandum of understanding under  
2 subsection (b), the".

3 Page 3, line 2, delete "The" and insert "If the superintendent  
4 negotiates the terms of a memorandum of understanding under  
5 subsection (b), the".

6 Page 3, between lines 4 and 5, begin a new paragraph and insert:

7 "SECTION 4. IC 22-1-1-22 IS ADDED TO THE INDIANA CODE  
8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
9 1, 2009]: **Sec. 22. (a) The department of labor shall employ a  
10 sufficient number of administrative law judges to hear and decide  
11 cases initiated by the department under IC 22-5-1.5.**

12 **(b) An administrative law judge employed by the department is  
13 subject to IC 4-21.5."**

14 Delete pages 4 through 8.

15 Page 9, delete lines 1 through 34, begin a new paragraph and insert:

16 "SECTION 5. IC 22-5-1.5 IS ADDED TO THE INDIANA CODE  
17 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
18 JULY 1, 2009]:

19 **Chapter 1.5. Employment of Unauthorized Aliens**

20 **Sec. 1. (a) This chapter applies only to an employee that an  
21 employer hires after June 30, 2009.**

22 **(b) Except as provided in subsection (c), this chapter does not  
23 apply to the following:**

24 **(1) A public utility (as defined in IC 8-1-2-1(a)) that is subject  
25 to regulation by the Indiana utility regulatory commission  
26 under IC 8-1-2.**

27 **(2) A hospital licensed under IC 16-21.**

28 **(3) A private psychiatric institution licensed under IC 12-25.**

29 **(4) A community mental health center identified in  
30 IC 12-29-2-1.**

31 **(5) A nonprofit corporation.**

32 **(6) A person who operates a business of transporting  
33 emergency patients by ambulance or using a nontransporting  
34 emergency medical services vehicle (as defined in  
35 IC 16-31-3-0.5).**

36 **(7) A corporation organized under IC 8-1-13.**

37 **(8) A corporation organized under IC 23-17 that is an electric  
38 cooperative and that has at least one (1) member that is a**

corporation organized under IC 8-1-13.

(9) A municipally owned utility (as defined in IC 8-1-2-1(h)).

(c) The entities listed in subsection (b) are subject to section 29 of this chapter.

Sec. 2. As used in this chapter, "agency" means any state or local administration, agency, authority, board, bureau, commission, committee, council, department, division, institution, office, service, or other similar body of government created or established by law that issues a license for purposes of operating a business in Indiana.

Sec. 3. As used in this chapter, "department" refers to the department of labor.

Sec. 4. As used in this chapter, "employee" means an individual who:

- (1) performs services for an employer; and
- (2) is an individual from whom the employer is required to withhold wages under IC 6-3-4-8 or is an employee described in IC 6-3-4-8(l).

Sec. 5. (a) As used in this chapter, "employer" means a person that:

- (1) transacts business in Indiana;
- (2) has a license issued by an agency; and
- (3) employs one (1) or more individuals who perform employment services in Indiana.

However, if the person for whom the employee performs or performed the services does not have control of the payment of the wages for the services, the term "employer" means the person having control of the payment of wages to the employee.

(b) The term includes the state, a political subdivision (as defined in IC 3-5-2-38) of the state, and a self-employed person.

Sec. 6. As used in this chapter, "knowingly" has the meaning set forth in IC 35-41-2-2.

Sec. 7. (a) As used in this chapter, "license" means any agency permit, certificate, approval, registration, charter, or similar authorization that is:

- (1) required by law; and
- (2) issued by an agency;

for purposes of operating a business in Indiana.

1       (b) The term does not include an occupational or a professional  
2 license.

3       Sec. 8. As used in this chapter, "person" means an individual, a  
4 corporation, a limited liability company, a partnership, or another  
5 legal entity.

6       Sec. 9. As used in this chapter, "pilot program" means the  
7 employment verification pilot program administered by the United  
8 States Department of Homeland Security and the Social Security  
9 Administration, or the successor of that program.

10       Sec. 10. As used in this chapter, "unauthorized alien" has the  
11 meaning set forth in 8 U.S.C. 1324a(h)(3).

12       Sec. 11. An employer shall not knowingly employ an  
13 unauthorized alien.

14       Sec. 12. (a) The attorney general may investigate a complaint  
15 filed with the attorney general that an employer knowingly  
16 employed an unauthorized alien in violation of section 11 of this  
17 chapter.

18       (b) In investigating a complaint under subsection (a), the  
19 attorney general shall verify the work authorization of the alleged  
20 unauthorized alien with the federal government under 8 U.S.C.  
21 1373(c).

22       (c) A complaint filed with the attorney general under subsection  
23 (a) must be:

- 24           (1) in writing; and
- 25           (2) signed by the individual filing the complaint.

26       Sec. 13. A state, county, or local official or employee may not  
27 attempt to make independently a final determination as to whether  
28 an individual is authorized to work in the United States.

29       Sec. 14. (a) If, after an investigation, the attorney general  
30 determines that an employer has knowingly employed an  
31 unauthorized alien, the attorney general shall notify the United  
32 States Immigration and Customs Enforcement.

33       (b) If the attorney general determines that an employer has  
34 knowingly employed an unauthorized alien and that any defenses  
35 to knowingly employing an unauthorized alien established under  
36 this chapter do not apply, the attorney general may notify the  
37 department.

38       (c) The attorney general may not notify the department under

1 subsection (b) about an unauthorized alien unless the attorney  
 2 general determines that the defenses to knowingly employing an  
 3 unauthorized alien established under this chapter do not apply.

4 Sec. 15. (a) If the attorney general notifies the department under  
 5 section 14 of this chapter that an employer has knowingly  
 6 employed an unauthorized alien, the department may initiate an  
 7 administrative proceeding to determine if the employer has  
 8 violated section 11 of this chapter.

9 (b) An administrative hearing under this chapter shall be  
 10 conducted by an administrative law judge appointed by the  
 11 department under IC 22-1-1-22.

12 (c) IC 4-21.5 applies to an administrative proceeding under this  
 13 section.

14 (d) The department may initiate only one (1) administrative  
 15 proceeding against an employer relating to the employment of all  
 16 unauthorized aliens employed by the employer at the time the  
 17 department initiates the administrative proceeding.

18 (e) The department may initiate an additional administrative  
 19 proceeding against an employer under this section for a second or  
 20 subsequent violation of section 11 of this chapter only for violations  
 21 allegedly committed by the employer after the employer receives  
 22 notice that the department has initiated an initial administrative  
 23 proceeding against the employer under this section.

24 Sec. 16. If the department initiates an administrative proceeding  
 25 under section 15 of this chapter, an administrative law judge may  
 26 hold an administrative hearing and make a determination on an  
 27 expedited basis.

28 Sec. 17. (a) Except as provided in sections 19 and 20 of this  
 29 chapter, if an administrative law judge determines that an  
 30 employer knowingly employed an unauthorized alien in violation  
 31 of section 11 of this chapter, the following apply:

32 (1) The administrative law judge may do the following:

33 (A) Order the employer to terminate the employment of all  
 34 unauthorized aliens employed by the employer.

35 (B) Place the employer on probation for a three (3) year  
 36 period. During the probationary period, the employer shall  
 37 file a quarterly report with the attorney general  
 38 concerning each new individual the employer hires at the

1           specific business location where the unauthorized alien  
2           worked.

3           (C) Order the employer to file a sworn affidavit signed by  
4           the employer with the department within three (3) business  
5           days after the order is issued under clause (A). The  
6           affidavit must include a statement that the employer:

7                 (i) has terminated the employment of all unauthorized  
8                 aliens; and

9                 (ii) will not knowingly employ an unauthorized alien.

10          (2) The administrative law judge, after considering the  
11          relevant factors listed in subsection (b), may order an agency  
12          to suspend, for not more than ten (10) business days, a license  
13          described in section 18(a) of this chapter that is held by the  
14          employer.

15          (b) An administrative law judge may consider the following  
16          factors, if applicable, in deciding whether to order an agency to  
17          suspend an employer's license under subsection (a)(2):

18                 (1) The number of unauthorized aliens employed by the  
19                 employer.

20                 (2) Any prior misconduct by the employer.

21                 (3) The degree of harm resulting from the violation.

22                 (4) The extent to which the employer made good faith efforts  
23                 to comply with any applicable requirements under this  
24                 chapter.

25                 (5) The duration of the violation.

26                 (6) The role of the directors, officers, or agents of the  
27                 employer in the violation.

28                 (7) Any other factors the administrative law judge considers  
29                 relevant.

30          Sec. 18. (a) This section applies to all licenses held by an  
31          employer:

32                 (1) that are necessary to operate the employer's business at  
33                 the employer's business location where an unauthorized alien  
34                 was employed by the employer; or

35                 (2) if a license is not necessary at the employer's business  
36                 location described in subdivision (1), that are held by the  
37                 employer for the employer's primary place of business.

38          (b) If an employer fails to file a sworn affidavit required under

section 17(a)(1)(C) of this chapter with the department within three (3) business days after the order requiring the filing of the affidavit is issued, the administrative law judge may order the appropriate agencies to suspend all licenses that are held by the employer. All licenses suspended under this subsection may remain suspended until the employer files a sworn affidavit described in section 17(a)(1)(C) of this chapter with the department.

(c) If an employer subject to an order filed under subsection (b) files a sworn affidavit required under section 17(a)(1)(C) of this chapter, the administrative law judge may order the appropriate agencies to reinstate the employer's suspended licenses.

**Sec. 19. If:**

(1) an administrative law judge determines that an employer knowingly employed an unauthorized alien in a second violation of section 11 of this chapter; and

(2) the violation referred to in subdivision (1) occurred not later than five (5) years after the date of the initial violation; the administrative law judge may order the appropriate agencies to suspend, for not more than ten (10) business days, all licenses described in section 18(a) of this chapter that are held by the employer.

**Sec. 20. (a) If:**

(1) an administrative law judge determines that an employer knowingly employed an unauthorized alien in a third violation of section 11 of this chapter; and

(2) the violation referred to in subdivision (1) occurred not later than five (5) years after the date of the initial violation; the administrative law judge may order the appropriate agencies to revoke for a period of time determined by the administrative law judge or permanently revoke all licenses held by the employer that are described in section 18(a) of this chapter.

(b) An employer may petition the governor under IC 4-21.5-3-30 to review an order issued by an administrative law judge revoking the employer's license or licenses.

**Sec. 21. (a)** An employer may, after the employer has exhausted all administrative and judicial remedies, request the governor to terminate or reduce the term of revocation of the employer's license or licenses under an order issued by an administrative law

1 judge under section 20 of this chapter.

2 (b) The governor may terminate or reduce the term of  
3 revocation of an employer's license or licenses under an order  
4 issued by an administrative law judge under section 20 of this  
5 chapter and require the appropriate agency to reinstate the  
6 employer's license.

7 Sec. 22. (a) If an agency receives an order from an  
8 administrative law judge under section 17(a)(2), 18(b), or 19 of this  
9 chapter, the agency shall immediately suspend the license or  
10 licenses described in section 18(a) of this chapter that are held by  
11 the employer to which the order relates.

12 (b) If an agency receives an order from an administrative law  
13 judge under section 20 of this chapter, the agency shall  
14 immediately revoke the license or licenses described in section  
15 18(a) of this chapter that are held by the employer to which the  
16 order relates.

17 Sec. 23. An administrative law judge shall send copies of all  
18 orders issued under sections 17, 18, 19, and 20 of this chapter to the  
19 attorney general.

20 Sec. 24. (a) In determining whether an individual is an  
21 unauthorized alien for purposes of this chapter, an administrative  
22 law judge may consider only the federal government's verification  
23 or status information provided under 8 U.S.C. 1373(c).

24 (b) The federal government's verification or status information  
25 provided under 8 U.S.C. 1373(c) creates a rebuttable presumption  
26 of an individual's lawful status.

27 (c) An administrative law judge may:

28 (1) take notice of the federal government's verification or  
29 status information; and

30 (2) request the federal government to provide automated or  
31 testimonial verification under 8 U.S.C. 1373(c).

32 Sec. 25. The department may not initiate an administrative  
33 proceeding against an employer under section 15 of this chapter  
34 for knowingly employing an unauthorized alien if the employer  
35 verified the employment authorization of the employed individual  
36 through the pilot program.

37 Sec. 26. An employer may establish as an affirmative defense  
38 against an alleged violation under section 11 of this chapter that



the employer complied in good faith with the requirements of 8 U.S.C. 1324a(b).

**Sec. 27. The attorney general shall:**

- (1) maintain copies of court orders received under section 23 of this chapter;
- (2) make the administrative orders available on the attorney general's Internet web site; and
- (3) establish and maintain a data base of the names and addresses of the employers that have a violation under this chapter.

**Sec. 28. This chapter does not require an employer to take any action that the employer believes in good faith would violate federal law.**

**Sec. 29. After June 30, 2009, an employer shall verify the employment eligibility of each employee of the employer through the pilot program after hiring the employee.**

**Sec. 30. A person who files a complaint with the attorney general under this chapter, knowing that the complaint is false or frivolous, commits a Class B misdemeanor.**

**Sec. 31. The suspension or revocation of a license under this chapter does not relieve an employer from an obligation to withhold, collect, or pay income tax on wages paid by the employer to an employee.**

**Sec. 32. This chapter shall be enforced without regard to race or national origin."**

Page 10, line 4, delete "36-1-2-13." and insert "**IC 36-1-2-13. However, the term does not include a hospital organized and operated under IC 16-22-2, IC 16-22-8, or IC 16-23.**".

Page 10, line 27, after "not" insert "**knowingly**".

Page 10, delete lines 29 through 42, begin a new paragraph and insert:

**"(b) If a contractor or subcontractor violates this section, the state agency or political subdivision may file a complaint concerning the violation by the contractor or subcontractor with the attorney general under IC 22-5-1.5."**

Page 11, delete lines 1 through 18.

Page 11, line 19, delete "13." and insert "**11.**".

Page 11, line 23, delete "14." and insert "**12.**".

- 1 Page 11, line 24, delete "13" and insert "**11**".
- 2 Page 11, line 26, delete "15." and insert "**13.**".
- 3 Page 11, line 39, delete "IC 22-5-1.5-22" and insert "**IC**
- 4 **22-5-1.5-25**".
- 5 Page 11, delete lines 41 through 42.
- 6 Delete page 12.
- 7 Page 13, delete lines 1 through 11.
- 8 Page 13, line 12, delete "[EFFECTIVE OCTOBER 1, 2009] A
- 9 prosecuting" and insert "[EFFECTIVE JULY 1, 2009]".
- 10 Page 13, line 13, delete "attorney may file an action" and insert
- 11 "**The department of labor may initiate an administrative**
- 12 **proceeding**".
- 13 Page 13, line 14, delete "IC 22-5-1.5-14," and insert "**IC**
- 14 **22-5-1.5-15,**".
- 15 Page 13, line 15, delete "IC 22-5-1.5-10," and insert "**IC**
- 16 **22-5-1.5-11,**".
- 17 Page 13, line 15, delete "September" and insert "**June 30, 2009.**".
- 18 Page 13, delete lines 16 through 19.
- 19 Page 13, line 21, delete "IC 22-5-1.5-11," and insert "**IC**
- 20 **22-5-1.5-12,**".
- 21 Page 13, after line 23, begin a new paragraph and insert:
- 22 "SECTION 9. [EFFECTIVE JULY 1, 2008] **(a) As used in this**
- 23 **SECTION, "law enforcement officer" has the meaning set forth in**
- 24 **IC 10-11-2-21.5, as added by this act.**
- 25 **(b) There is appropriated to the state police department one**
- 26 **million dollars (\$1,000,000) from the state general fund for the**
- 27 **state police department's use in training law enforcement officers**
- 28 **under a memorandum of understanding entered into under**
- 29 **IC 10-11-2-21.5, as added by this act.**
- 30 **(c) Money appropriated by this SECTION does not revert to the**
- 31 **state general fund at the close of any fiscal year, but remains**
- 32 **available for the use of the state police department until the**
- 33 **provisions of IC 10-11-2-21.5, as added by this act, are fulfilled.**
- 34 SECTION 10. [EFFECTIVE JULY 1, 2008] **(a) The definitions in**
- 35 **IC 22-5-1.5, as added by this act, apply throughout this SECTION.**
- 36 **(b) There is appropriated to the attorney general five hundred**
- 37 **thousand dollars (\$500,000) from the state general fund for the**
- 38 **attorney general's use in investigating complaints filed with the**

1 attorney general under IC 22-5-1.5-12, as added by this act, that an  
 2 employer knowingly employed an unauthorized alien in violation  
 3 of IC 22-5-1.5-11, as added by this act.

4 (c) Money appropriated by this SECTION does not revert to the  
 5 state general fund at the close of any fiscal year, but remains  
 6 available for use by the attorney general until the provisions of  
 7 IC 22-5-1.5, as added by this act, are fulfilled.

8 SECTION 11. [EFFECTIVE UPON PASSAGE] (a) As used in this  
 9 SECTION, "commission" refers to the commission on  
 10 Hispanic/Latino affairs established by IC 4-23-28-2.

11 (b) The commission shall study and prepare a report on:

12 (1) the requirements a person must meet to qualify for  
 13 naturalization; and

14 (2) the process by which United States citizenship is conferred  
 15 upon a person.

16 (c) The commission shall submit the report prepared in  
 17 accordance with subsection (b) to the legislative council in an  
 18 electronic format under IC 5-14-6 before July 1, 2009.

19 (d) There is appropriated to the commission fifty thousand  
 20 dollars (\$50,000) from the state general fund for the commission's  
 21 use in studying and preparing a report on the topics listed in  
 22 subsection (b). Any amount of the appropriated funds under this  
 23 subsection that are not used or encumbered revert to the state  
 24 general fund after June 30, 2009.

25 (e) This SECTION expires January 1, 2010.

26 SECTION 12. [EFFECTIVE UPON PASSAGE] (a) As used in this  
 27 SECTION, "commission" refers to the commission established  
 28 under subsection (b).

29 (b) The immigration cost impact commission is established.

30 (c) The commission consists of the following members:

31 (1) The executive director of the department of homeland  
 32 security or the director's designee.

33 (2) The commissioner of the department of labor or the  
 34 commissioner's designee.

35 (3) The chairperson of the commission on Hispanic/Latino  
 36 affairs established by IC 4-23-28-2 or the chairperson's  
 37 designee who is a member of the commission on  
 38 Hispanic/Latino affairs.

1           **(4) The secretary of family and social services or the**  
 2           **secretary's designee.**

3           **(5) The state superintendent of public instruction or the state**  
 4           **superintendent's designee.**

5           **(6) The commissioner of the department of correction or the**  
 6           **commissioner's designee.**

7           **(7) A representative of the business community.**

8           **(8) A representative of organized labor.**

9           **(9) A representative of hospital associations.**

10          **(10) Two (2) members of the senate, who may not be affiliated**  
 11          **with the same political party, to be appointed by the president**  
 12          **pro tempore of the senate.**

13          **(11) Two (2) members of the house of representatives, who**  
 14          **may not be affiliated with the same political party, to be**  
 15          **appointed by the speaker of the house of representatives.**

16          **The governor shall appoint the members designated by**  
 17          **subdivisions (7) through (9).**

18          **(d) The members of the commission shall select one (1) of the**  
 19          **appointed members to serve as chairperson and one (1) of the**  
 20          **appointed members to serve as vice chairperson.**

21          **(e) The commission shall meet at the call of the chairperson. The**  
 22          **commission shall meet at least one (1) time quarterly.**

23          **(f) The affirmative votes of a majority of the voting members**  
 24          **appointed to the commission are required by the commission to**  
 25          **take action on any measure, including a final report.**

26          **(g) Each member of the commission who is not a state employee**  
 27          **is entitled to the minimum salary per diem provided by**  
 28          **IC 4-10-11-2.1(b). The member is also entitled to reimbursement**  
 29          **for traveling expenses as provided under IC 4-13-1-4 and other**  
 30          **expenses actually incurred in connection with the member's duties**  
 31          **as provided in the state policies and procedures established by the**  
 32          **Indiana department of administration and approved by the budget**  
 33          **agency.**

34          **(h) Each member of the commission who is a state employee is**  
 35          **entitled to reimbursement for traveling expenses as provided under**  
 36          **IC 4-13-1-4 and other expenses actually incurred in connection**  
 37          **with the member's duties as provided in the state policies and**  
 38          **procedures established by the Indiana department of**

- 1 administration and approved by the budget agency.
- 2 (i) The commission shall study and prepare a report on the
- 3 following:
- 4 (1) The financial impact of individuals who are unlawfully
- 5 present in the United States on the following in Indiana:
- 6 (A) Education.
- 7 (B) Health care.
- 8 (C) The criminal justice system, including court and
- 9 attorney costs and costs of incarceration.
- 10 (D) Welfare.
- 11 (2) The impact of individuals who are unlawfully present in
- 12 the United States on the following in Indiana:
- 13 (A) Wages.
- 14 (B) State and local agencies and offices that issue or are
- 15 required to check identification.
- 16 (3) Issues related to the following:
- 17 (A) The state's authority and responsibility concerning a
- 18 child who:
- 19 (i) is a United States citizen; and
- 20 (ii) has a parent who was or both parents who were
- 21 deported for violation of immigration laws.
- 22 (B) The societal and familial impact of deportation of a
- 23 family member.
- 24 (j) The commission shall submit the report prepared in
- 25 accordance with subsection (i) to the legislative council in an
- 26 electronic format under IC 5-14-6 before July 1, 2009.
- 27 (k) This SECTION expires January 1, 2010.
- 28 SECTION 13. An emergency is declared for this act."
- 29 Renumber all SECTIONS consecutively.
- (Reference is to SB 335 as reprinted January 29, 2008.)

**and when so amended that said bill do pass.**

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Representative Van Haaften